

CENTER FOR DISABILITY ACCESS
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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

Scott Johnson

Plaintiff,

v.

Regency Centers, L.P., a Delaware
Limited Partnership;

Regency Centers Corporation, a
Florida Corporation;

Henry Rodgin

Defendants.

Case No.

**Complaint For Damages And
Injunctive Relief For Violations
Of: Americans With Disabilities
Act; Unruh Civil Rights Act**

Plaintiff Scott Johnson complains of Regency Centers, L.P., a Delaware Limited Partnership; Regency Centers Corporation, a Florida Corporation; Henry Rodgin; and alleges as follows:

PARTIES:

1. Plaintiff is a California resident with physical disabilities. Plaintiff is a level C-5 quadriplegic. He cannot walk and also has significant manual dexterity impairments. He uses a wheelchair for mobility and has a specially equipped van.

1 2. Defendants Regency Centers, L.P. and Regency Centers Corporation
2 owned the real property located at or about 1623 Hollenbeck Ave, Sunnyvale,
3 California, in March 2021 and April 2021.

4 3. Defendants Regency Centers, L.P. and Regency Centers Corporation
5 own the real property located at or about 1623 Hollenbeck Ave, Sunnyvale,
6 California, currently.

7 4. Defendant Henry Rodgin owned Optivision located at or about 1623
8 Hollenbeck Ave, Sunnyvale, California, in March 2021.

9 5. Defendant Henry Rodgin owns Optivision located at or about 1623
10 Hollenbeck Ave, Sunnyvale, California, currently.

11 6. Plaintiff does not know the true names of Defendants, their business
12 capacities, their ownership connection to the property and business, or their
13 relative responsibilities in causing the access violations herein complained of,
14 and alleges a joint venture and common enterprise by all such Defendants.
15 Plaintiff is informed and believes that each of the Defendants herein is
16 responsible in some capacity for the events herein alleged, or is a necessary
17 party for obtaining appropriate relief. Plaintiff will seek leave to amend when
18 the true names, capacities, connections, and responsibilities of the Defendants
19 are ascertained.

20
21 **JURISDICTION & VENUE:**

22 7. The Court has subject matter jurisdiction over the action pursuant to 28
23 U.S.C. § 1331 and § 1343(a)(3) & (a)(4) for violations of the Americans with
24 Disabilities Act of 1990, 42 U.S.C. § 12101, et seq.

25 8. Pursuant to supplemental jurisdiction, an attendant and related cause
26 of action, arising from the same nucleus of operative facts and arising out of
27 the same transactions, is also brought under California's Unruh Civil Rights
28 Act, which act expressly incorporates the Americans with Disabilities Act.

1 9. Venue is proper in this court pursuant to 28 U.S.C. § 1391(b) and is
2 founded on the fact that the real property which is the subject of this action is
3 located in this district and that Plaintiff's cause of action arose in this district.
4

5 **FACTUAL ALLEGATIONS:**

6 10. Plaintiff went to Optivision in March 2021 with the intention to avail
7 himself of its goods or services motivated in part to determine if the
8 defendants comply with the disability access laws. Not only did Plaintiff
9 personally encounter the unlawful barriers in March 2021, but he wanted to
10 return and patronize the business several times but was specifically deterred
11 due to his actual personal knowledge of the barriers gleaned from his
12 encounter with them.

13 11. Optivision is a facility open to the public, a place of public
14 accommodation, and a business establishment.

15 12. Unfortunately, on the date of the plaintiff's visit, the defendants failed
16 to provide wheelchair accessible sales counters in conformance with the ADA
17 Standards as it relates to wheelchair users like the plaintiff.

18 13. Optivision provides sales counters to its customers but fails to provide
19 any wheelchair accessible sales counters.

20 14. A problem that plaintiff encountered was that the sales counter was too
21 high. There was no counter that was 36 inches or less in height that plaintiff
22 could use for his transactions.

23 15. Plaintiff believes that there are other features of the sales counters that
24 likely fail to comply with the ADA Standards and seeks to have fully compliant
25 sales counters for wheelchair users.

26 16. On information and belief, the defendants currently fail to provide
27 wheelchair accessible sales counters.

28 17. Additionally, on the date of the plaintiff's visit, the defendants failed to

1 provide wheelchair accessible door hardware in conformance with the ADA
2 Standards as it relates to wheelchair users like the plaintiff.

3 18. Optivision provides door hardware to its customers but fails to provide
4 any wheelchair accessible door hardware.

5 19. One problem that plaintiff encountered was that the entrance door
6 hardware had a panel style handle that required tight grasping to operate.

7 20. Plaintiff believes that there are other features of the door hardware that
8 likely fail to comply with the ADA Standards and seeks to have fully compliant
9 door hardware for wheelchair users.

10 21. On information and belief, the defendants currently fail to provide
11 wheelchair accessible door hardware.

12 22. These barriers relate to and impact the plaintiff's disability. Plaintiff
13 personally encountered these barriers.

14 23. As a wheelchair user, the plaintiff benefits from and is entitled to use
15 wheelchair accessible facilities. By failing to provide accessible facilities, the
16 defendants denied the plaintiff full and equal access.

17 24. The failure to provide accessible facilities created difficulty and
18 discomfort for the Plaintiff.

19 25. The defendants have failed to maintain in working and useable
20 conditions those features required to provide ready access to persons with
21 disabilities.

22 26. The barriers identified above are easily removed without much
23 difficulty or expense. They are the types of barriers identified by the
24 Department of Justice as presumably readily achievable to remove and, in fact,
25 these barriers are readily achievable to remove. Moreover, there are numerous
26 alternative accommodations that could be made to provide a greater level of
27 access if complete removal were not achievable.

28 27. Plaintiff will return to Optivision to avail himself of its goods or services

1 and to determine compliance with the disability access laws once it is
2 represented to him that Optivision and its facilities are accessible. Plaintiff is
3 currently deterred from doing so because of his knowledge of the existing
4 barriers and his uncertainty about the existence of yet other barriers on the
5 site. If the barriers are not removed, the plaintiff will face unlawful and
6 discriminatory barriers again.

7 28. Given the obvious and blatant nature of the barriers and violations
8 alleged herein, the plaintiff alleges, on information and belief, that there are
9 other violations and barriers on the site that relate to his disability. Plaintiff will
10 amend the complaint, to provide proper notice regarding the scope of this
11 lawsuit, once he conducts a site inspection. However, please be on notice that
12 the plaintiff seeks to have all barriers related to his disability remedied. See
13 *Doran v. 7-11*, 524 F.3d 1034 (9th Cir. 2008) (holding that once a plaintiff
14 encounters one barrier at a site, he can sue to have all barriers that relate to his
15 disability removed regardless of whether he personally encountered them).

16
17 **I. FIRST CAUSE OF ACTION: VIOLATION OF THE AMERICANS**
18 **WITH DISABILITIES ACT OF 1990** (On behalf of Plaintiff and against all
19 Defendants.) (42 U.S.C. section 12101, et seq.)

20 29. Plaintiff re-pleads and incorporates by reference, as if fully set forth
21 again herein, the allegations contained in all prior paragraphs of this
22 complaint.

23 30. Under the ADA, it is an act of discrimination to fail to ensure that the
24 privileges, advantages, accommodations, facilities, goods and services of any
25 place of public accommodation is offered on a full and equal basis by anyone
26 who owns, leases, or operates a place of public accommodation. See 42 U.S.C.
27 § 12182(a). Discrimination is defined, inter alia, as follows:

28 a. A failure to make reasonable modifications in policies, practices,

1 or procedures, when such modifications are necessary to afford
2 goods, services, facilities, privileges, advantages, or
3 accommodations to individuals with disabilities, unless the
4 accommodation would work a fundamental alteration of those
5 services and facilities. 42 U.S.C. § 12182(b)(2)(A)(ii).

6 b. A failure to remove architectural barriers where such removal is
7 readily achievable. 42 U.S.C. § 12182(b)(2)(A)(iv). Barriers are
8 defined by reference to the ADA Standards.

9 c. A failure to make alterations in such a manner that, to the
10 maximum extent feasible, the altered portions of the facility are
11 readily accessible to and usable by individuals with disabilities,
12 including individuals who use wheelchairs or to ensure that, to the
13 maximum extent feasible, the path of travel to the altered area and
14 the bathrooms, telephones, and drinking fountains serving the
15 altered area, are readily accessible to and usable by individuals
16 with disabilities. 42 U.S.C. § 12183(a)(2).

17 31. When a business provides sales or transaction counters, it must provide
18 accessible sales or transaction counters.

19 32. Here, accessible sales or transaction counters have not been provided in
20 conformance with the ADA Standards.

21 33. When a business provides door hardware, it must provide accessible
22 door hardware.

23 34. Here, accessible door hardware has not been provided in conformance
24 with the ADA Standards.

25 35. The Safe Harbor provisions of the 2010 Standards are not applicable
26 here because the conditions challenged in this lawsuit do not comply with the
27 1991 Standards.

28 36. A public accommodation must maintain in operable working condition

1 those features of its facilities and equipment that are required to be readily
2 accessible to and usable by persons with disabilities. 28 C.F.R. § 36.211(a).

3 37. Here, the failure to ensure that the accessible facilities were available
4 and ready to be used by the plaintiff is a violation of the law.

5
6 **II. SECOND CAUSE OF ACTION: VIOLATION OF THE UNRUH CIVIL**
7 **RIGHTS ACT** (On behalf of Plaintiff and against all Defendants.) (Cal. Civ.
8 Code § 51-53.)

9 38. Plaintiff repleads and incorporates by reference, as if fully set forth
10 again herein, the allegations contained in all prior paragraphs of this
11 complaint. The Unruh Civil Rights Act (“Unruh Act”) guarantees, inter alia,
12 that persons with disabilities are entitled to full and equal accommodations,
13 advantages, facilities, privileges, or services in all business establishment of
14 every kind whatsoever within the jurisdiction of the State of California. Cal.
15 Civ. Code §51(b).

16 39. The Unruh Act provides that a violation of the ADA is a violation of the
17 Unruh Act. Cal. Civ. Code, § 51(f).

18 40. Defendants’ acts and omissions, as herein alleged, have violated the
19 Unruh Act by, inter alia, denying, or aiding, or inciting the denial of, Plaintiff’s
20 rights to full and equal use of the accommodations, advantages, facilities,
21 privileges, or services offered.

22 41. Because the violation of the Unruh Civil Rights Act resulted in difficulty,
23 discomfort or embarrassment for the plaintiff, the defendants are also each
24 responsible for statutory damages, i.e., a civil penalty. (Civ. Code § 55.56(a)-
25 (c).)

26 42. Although the plaintiff encountered frustration and difficulty by facing
27 discriminatory barriers, even manifesting itself with minor and fleeting
28 physical symptoms, the plaintiff does not value this very modest physical

1 personal injury greater than the amount of the statutory damages.

2
3 **PRAYER:**

4 Wherefore, Plaintiff prays that this Court award damages and provide
5 relief as follows:

6 1. For injunctive relief, compelling Defendants to comply with the
7 Americans with Disabilities Act and the Unruh Civil Rights Act. Note: the
8 plaintiff is not invoking section 55 of the California Civil Code and is not
9 seeking injunctive relief under the Disabled Persons Act at all.

10 2. For equitable nominal damages for violation of the ADA. See
11 *Uzuegbunam v. Preczewski*, --- U.S. ---, 2021 WL 850106 (U.S. Mar. 8, 2021)
12 and any other equitable relief the Court sees fit to grant.

13 3. Damages under the Unruh Civil Rights Act, which provides for actual
14 damages and a statutory minimum of \$4,000 for each offense.

15 4. Reasonable attorney fees, litigation expenses and costs of suit, pursuant
16 to 42 U.S.C. § 12205; and Cal. Civ. Code §§ 52.

17
18 Dated: May 20, 2021

CENTER FOR DISABILITY ACCESS

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20 By: 

21 Amanda Seabock, Esq.
22 Attorney for plaintiff
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